

## § 63.05

(Sec. 303, 48 Stat. 1082, as amended; 47 U.S.C. 303)

[28 FR 13229, Dec. 5, 1963, as amended at 41 FR 20662, May 20, 1976; 58 FR 44906, Aug. 25, 1993]

### **§63.05 Commencement and completion of construction for domestic common carriers.**

Unless otherwise determined by the Commission upon proper showing in any particular case, in the event construction shall not have been begun upon a project involving an expenditure of more than \$500,000, or where facilities authorized have not been leased or acquired, within 12 months from the date of the Commission's authorization, or all or part of the proposed facilities shall not have been placed in operation within 36 months after such date, such authorization shall terminate at the end of such 12 or 36 months' period, as the case may be; in the case of projects involving an expenditure of \$500,000 or less, the authorization therefor shall terminate at the end of 9 months or 18 months, as the case may be, in the event construction thereof shall not have been commenced, or the facilities placed in operation, within such respective periods.

(Sec. 303, 48 Stat. 1082, as amended; 47 U.S.C. 303)

[41 FR 20662, May 20, 1976]

### **§63.06 Authority for supplementing facilities under approved annual program plan.**

Any carrier may submit to the Commission a procedure pursuant to which such carrier proposes to request authority covering an annual program of projects for the supplementing of its existing facilities. After approval of such proposed procedure by the Commission, such carrier may request such authority in accordance with such procedure in lieu of filing separate applications for individual projects pursuant to §§ 63.01 and 63.03.

### **§63.07 Special procedures for non-dominant domestic common carriers.**

(a) Any party that would be a non-dominant domestic interstate communications common carrier is authorized to provide domestic, interstate services

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to any domestic point and to construct, acquire, or operate any transmission line as long as it obtains all necessary authorizations from the Commission for use of radio frequencies.

(b) Non-dominant, facilities-based domestic common carriers subject to this section shall not engage in any construction or extension of lines that may have a significant effect on the environment as defined in § 1.1307 of this chapter without prior compliance with the Commission's environmental rules. See 1.1312 of this chapter.

[49 FR 34831, Sept. 4, 1984, as amended at 56 FR 13414, Apr. 2, 1991; 62 FR 5165, Feb. 4, 1997]

### **§63.08 Lines outside of a carrier's exchange telephone service area.**

(a) An exchange telephone common carrier or its affiliate is not required to file for authority pursuant to 47 U.S.C. 214 and 47 CFR 63.01 to provide lines, or for existing lines, outside of the exchange telephone service area of that carrier and any of its affiliates when the lines are:

(1) For its non-common carrier services; or

(2) Sold to an unaffiliated party.

(b) If a nondominant common carrier and its affiliates are not affiliated with an exchange telephone common carrier, the nondominant carrier or its affiliate is not required to file for authority pursuant to 47 U.S.C. 214 and 47 CFR 63.01 to provide lines, or for existing lines, of the types described in paragraph (a) of this section between any domestic points. "Nondominant" is defined as in § 61.15(a) of this chapter.

(c) A common carrier or its affiliate is not required to file for authority pursuant to 47 U.S.C. 214 and § 63.01 to discontinue, reduce, or impair other non-common carrier service.

(d) A common carrier's costs of providing lines for non-common carrier offerings and costs of providing such offerings must be entered on books of account separate from those for its common carrier services.

(e) As used above, the term "affiliate" bars any financial or business relationship whatsoever by contract or otherwise, directly or indirectly between the carrier and the customer, except only the carrier-user relationship.

NOTE TO PARAGRAPH (e): Examples of situations in which a carrier and its customer will be deemed to be controlled or having a relationship include the following, among others: Where one is the debtor or creditor of the other (except with respect to charges for communication services); where they have a common officer, director, or other employee at the management level; where there is any element of ownership or other financial interest by one in the other; and where any part has a financial interest in both.

[49 FR 21335, May 21, 1984, as amended at 61 FR 10476, Mar. 14, 1996]

**§ 63.10 Regulatory classification of U.S. international carriers.**

(a) Unless otherwise determined by the Commission, any party authorized to provide an international communications service under this part shall be classified as either dominant or non-dominant for the provision of particular international communications services on particular routes as set forth in this section. The rules set forth in this section shall also apply to determinations of regulatory status pursuant to §§ 63.11 and 63.13. For purposes of paragraphs (a)(1) through (a)(3) of this section, "affiliation" and "foreign carrier" are defined as set forth in § 63.18(h)(1)(i) and (ii), respectively. For purposes of paragraphs (a)(2) and (a)(3) of this section, the relevant markets on the foreign end of a U.S. international route include: international transport facilities or services, including cable landing station access and backhaul facilities; inter-city facilities or services; and local access facilities or services on the foreign end of a particular route.

(1) A U.S. carrier that has no affiliation with, and that itself is not, a foreign carrier in a particular country to which it provides service (i.e., a destination country) shall presumptively be considered non-dominant for the provision of international communications services on that route;

(2) Except as provided in paragraph (a)(4) of this section, a U.S. carrier that is, or that has or acquires an affiliation with a foreign carrier that is a monopoly provider of communications services in a relevant market in a destination country shall presumptively be classified as dominant for the provision

of international communications services on that route; and

(3) A U.S. carrier that is, or that has or acquires an affiliation with a foreign carrier that is not a monopoly provider of communications services in a relevant market in a destination country and that seeks to be regulated as non-dominant on that route bears the burden of submitting information to the Commission sufficient to demonstrate that its foreign affiliate lacks sufficient market power on the foreign end of the route to affect competition adversely in the U.S. market. If the U.S. carrier demonstrates that the foreign affiliate lacks 50 percent market share in the international transport and the local access markets on the foreign end of the route, the U.S. carrier shall presumptively be classified as non-dominant.

(4) A carrier that is authorized under this part to provide to a particular destination country a particular international communications service, and that provides such service solely through the resale of an unaffiliated U.S. facilities-based carrier's international switched services (either directly or indirectly through the resale of another U.S. resale carrier's international switched services), shall presumptively be classified as non-dominant for the provision of the authorized service. The existence of an affiliation with a U.S. facilities-based international carrier shall be assessed in accordance with the definition of affiliation contained in § 63.18(h)(1)(i) of this chapter, except that the phrase "U.S. facilities-based international carrier" shall be substituted for the phrase "foreign carrier."

(b) Any party that seeks to defeat the presumptions in paragraph (a) of this section shall bear the burden of proof upon any issue it raises as to the proper classification of the U.S. carrier.

(c) Any carrier classified as dominant for the provision of particular services on particular routes under this section shall comply with the following requirements in its provision of such services on each such route:

(1) File international service tariffs on one day's notice without cost support;